

RC 1204
XII-189 / (Jail)
C. J. P. R. 11/94/2,000

On A 2569/98



High Court of Madhya Pradesh
JABALPUR.

29 OCT 1998

Receipt Clerk

High Court, Jabalpur

APPEAL OF PRISONER

No. 8464 Name जोहन
Father's name मानसिंह स्त्रीपर उडिया, साकिन फा. डी. ह. गुकुवारी बाजार रायपुर;
Residence जिला रायपुर म.प्र. 01 Age 23 साल
Sentenced to आजीवन कारावास, जु. 500/- On 28/08/98
Under section 302, 498, 134, भा. 0 द. वि. 0. by माननीय नित्यीय अपर सत्र न्यायाधीश, रायपुर
जिला रायपुर म.प्र. 01

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement 1.5/10/98
- 2 Date on which copy received 1.5/10/98
- 3 Date on which Appeal sent 1.6/10/98
- 4 Whether the prisoner wishes to be represented or not - Yes / No

No. 8464 Name जोहन बलद मानसिंह स्त्रीपर उडिया

Confined in केन्द्रीय Jail रायपुर म.प्र. 01

No. 324/विधि/98 Dated 1.6/10/1998

Forwarded to the CHIEF JUDICIAL MAGISTRATE माननीय अतिरिक्त प्रंजीयक सहोदय,
together with a copy of judgement or order माननीय उच्च न्यायालय मध्य प्रदेश जबलपुर
mission to the proper Appellate Court.

संलग्न:- सत्राद क्रमांक-64/97 की

प्रमाणित प्रति,

Superintendent

Central Jail, Raipur. (M.P.)

Jail

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate Court

(P. T. O.)

मामला क्रमांक G.A.No..2569/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	D.B. : Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ. 14-2-2007 Mr. Prashant Jaiswal, Sr. Advocate with Mr. Vinay Pandey, Advocate for the appellant. Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent/State. Arguments heard. Oral judgment dictated on Dais. Per L.C.Bhadoo, J. : By this appeal, the appellant has questioned legality and correctness of judgment of conviction and order of sentence dated 28.08.1998 passed by 3rd Additional Sessions Judge, Raipur in Sessions Trial No. 64/1997, whereby the learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Sections 302 and 498-A of I.P.C. sentenced him to undergo imprisonment for life, to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo one month R.I. and six months R.I. respectively. 2. Case of the prosecution, in brief, is that Rekha (since deceased) was married with accused/appellant. At the time of incident both were residing together at Sukrawari Bazar, Raipur. On the fateful day i.e. 17.12.96 at about 6.30 a.m., accused/appellant set Rekha on fire after pouring Kerosene oil on her body and committed her murder. Further allegation against the accused/appellant is that he used to beat the deceased and subject her to cruelty. The matter was reported by Chanda Bai on the same day in the police station Ganj, Raipur vide Dehati Nalishi	

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मामला क्रमांक Cr.A.O.No. 2539/98 सम 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Ex.P-1. While making the report Chanda Bai took Rekha to the police station also. Based on the above Dehati Nalishi, the Station House Officer registered offence under Section 302 of IPC under Ex.P-5. However Rekha succumbed to the burn injuries on the same evening. Merg intimation to that effect Ex.P-4A was sent to the police station Moudha Para which was registered as Ex.P-6 and Ex.P-7. The Investigating Officer left for Medical College Hospital, Raipur along with Executive Magistrate, Raipur, prepared inquest Ex.P-2 on the body of Rekha. Post mortem was conducted by Dr. Arvind Neralwar, he prepared post mortem report Ex.P-3 in which he opined that cause of death was syncope due to ante mortem burns. Rekha was sent by police to Medical College Hospital, Raipur where Dr. Sanjay Pandey examined burn injuries and opined that there was 100% burn and injury report Ex.P-15 was given. Site plan of the place of occurrence Ex.P-16 was prepared. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where report Ex.P-19 was received. After completion of investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Raipur who in turn committed the case to the Sessions Judge, Raipur from where learned 3rd Additional Sessions Judge received the case on transfer for trial. 3. Prosecution in order to establish charges against the accused/appellant examined twenty three witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him and stated that he is innocent, he has been falsely implicated in the crime. He also examined Keertan D.W.-1 and Shyamu D.W.-2 in his defence.	

P.T.O.

मामला क्रमांक 2569/98
सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	4. We have heard Mr. Prashant Jaiswal, Sr. Advocate with Mr. Vinay Pandey and Mr. U.N.S. Deo on behalf of the State. 5. As per the evidence it is the admitted position that Rekha died on account of burn injuries. Learned counsel for the accused/appellant argued that P.W.-3 Smt. Amna Bi, neighbourer of deceased has stated that in the morning of the fateful day she was standing in front of her house, she saw that the accused/appellant was beating Rekha, he was saying that he will set her on fire, after catching her by hairs, took her inside the house and five minutes thereafter she saw fire erupted on account of Kerosene oil whereas another prosecution witness P.W.-7 Shanti Bai who was residing at the adjoining house of the injured has not stated so. She stated that she saw Rekha crying "save, save", the accused/appellant was standing there, he was not speaking anything on which, she offered a chaddar to the accused/appellant to cover the body of Rekha whereupon he took chaddar and covered the body of Rekha. Learned counsel submitted that therefore the evidence of Amna Bi (P.W.-3) cannot be believed. Moreover, she has improved her version in the Court evidence and in the police statement Ex.D-2. She has not stated that she saw the accused/appellant taking Rekha inside after catching her by hairs. She has also not stated in her police diary statement that the accused/appellant was saying to Rekha that he will set her on fire, therefore the evidence of Amna Bi does not inspire confidence. 6. On the other hand Mr. U.N.S. Deo supported the judgment of the trial Court.	

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मामला क्रमांक Cr. A. No. 2579/98 स. 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	7. In order to appreciate the arguments advanced by counsel for the accused/appellant, we have perused the evidence and the judgment of the trial Court. Conviction of the accused/appellant rests on following circumstances : i) that deceased Rekha made oral dying declaration before her mother P.W.-1 Chanda Bai, P.W.-3 Amna Bi and P.W.-5 Chetan Das Jethani-brother of the deceased. ii) that Amna Bi saw accused/appellant while threatening the deceased and taking her inside the house after catching her by hairs and thereafter she heard the sound of kerosene fire flame in the kitchen. The deceased came out from the kitchen. Even P.W.-7 Shanti Bai also saw the accused person in the house. Thereafter the accused/appellant took Rekha in burnt condition to her parents' house and left her there. iii) no explanation has been offered by the accused/appellant as to how Rekha sustained burn injuries. 8. As far as the first circumstance is concerned, P.W.-1 Chanda Bai has stated that ten months before the date of incident the accused committed theft therefore he was sent to jail. On Monday her daughter got him released and on the same night the accused/appellant gave beating to her daughter (Rekha) and after setting her on fire he left Rekha at her	

P.T.O.

मामला क्रमांक *C.A. No. 2569/18* *सन् 200*

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - S -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	residence. Thereafter she took her to police chowki, from where she was taken to D.K. Hospital where her daughter stated that accused was demanding Rs. 500/- . When she did not give money to him he set her on fire. In Ex.P-1 Dehati Nalishi also this witness mentioned that Rekha made oral dying declaration. P.W-3 Amna Bi has stated that she saw the accused/appellant taking Rekha inside the house and thereafter the sound of kerosene flames were heard from the kitchen. In para two she has stated that whole body of Rekha was burnt, clothes were burnt and thrice she stated that accused/appellant had set her on fire. P.W.-5 Chetan Das Jethani, brother of the deceased on cross examination by the counsel for the accused/appellant has stated that at about 2.00 p.m. when his sister gained consciousness she disclosed that the accused/appellant set her on fire. All these three witnesses have not been meticulously cross examined on the aspect of dying declaration made by the deceased before them. There is nothing in their cross examination to show that the deceased had not made any oral dying declaration before them. As per settled law, before resting conviction or before believing the dying declaration, the Court is required to ensure that the deceased was in a fit state of mind to give dying declaration and dying declaration must be of such a nature to inspire full confidence of Court in its truthfulness and correctness. That the dying declaration is not an outcome of tutoring, prompting or a product of imagination. The defence has not been able to elicit in the cross examination of these witnesses or in the doctor's evidence that the deceased was not in fit state of mind to give oral dying declaration or that the dying declaration is outcome of tutoring, prompting or imagination. Therefore we are of the considered opinion that there is nothing on record that the oral dying declaration was an outcome of tutoring. The fact	

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मामला क्रमांक ... G.A.No. 2569/98 ... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	remains that Rekha died on account of 100% burn injuries on her body. The presence of the accused/appellant in the house at the time when Rekha sustained burn injuries is established by prosecution evidence. Rather Chanda Bai P.W.-1 stated that the accused/appellant himself left Rekha at her residence in burnt condition and no explanation whatsoever has come forth from the side of the accused as to how Rekha sustained burn injuries, rather he has stated that he has been implicated in false case. From the evidence available on record of neighbour P.W.-3 Amna Bi, the dying declaration stands corroborated. 9. So far as second point is concerned, P.W.-3 Amna Bi was admittedly residing in a house in front of the house of the deceased. She has categorically stated that in the morning she was standing outside her house, at that time she saw that the accused/appellant was threatening the deceased, he took her inside the house and thereafter she heard the sound of fire flames of kerosene. She was crying. Thereafter Rekha came out in a burnt condition, she tried to enter her house but she closed the door, thereafter she offered her a chaddar. P.W.-1 Chanda Bai has stated that the accused/appellant was in the habit of beating Rekha. He committed theft therefore he was sent to jail and on Monday Rekha got him released and on the same night he had beaten Rekha, thereafter set her on fire. The accused/appellant himself took her to her parents house in rickshaw. Even P.W.-7 Shanti Bai has also stated that at about 6.30 a.m. in the morning she saw Rekha in a burnt condition in the courtyard of the house, Rekha was crying "save,save". Accused was standing there but he was not speaking anything, on which she offered a chaddar to the accused/appellant to cover the body of Rekha. P.W.-9 Babla has also	

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मामला क्रमांक G.A.No. 2569/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 7 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	stated that he saw the wife of accused/appellant while burning and the accused was also standing in the house. As far as argument of the counsel for the accused/appellant that there is contradiction between the evidence of P.W.-7 Shanti Bai and P.W.-3 Amna Bi is concerned, perusal of the evidence of these two witnesses does not reflect that there is material contradiction in the evidence of these two witnesses. There may be every chance that Shanti Bai had occasion to see Rekha when she came out of the house in burnt condition and she had no occasion to see the accused/appellant and the deceased when the accused was threatening before setting her on fire. From cross examination of these two witnesses, the defence has not been able to bring on record any circumstance in order to indicate that in fact P.W.-3 Amna Bi was either interested in Rekha or had any animosity against the accused/appellant so as to give false evidence. Even it has not come in cross examination of P.W.-7 Shanti Bai that since when she was standing out of her house, whether before setting Rekha on fire, the accused was threatening Rekha in front of her house, at that time Shanti Bai was standing out of the house or not. Therefore, we are of the considered opinion that there is no contradiction in the evidence of these two witnesses. As far as improvement in the Court evidence of P.W.-3 Amna Bi is concerned, it is true that in her police diary statement Ex. D-2 there is no mention that the accused/appellant was saying to Rekha that he will set her on fire and that he took Rekha inside the house after catching her by hairs but merely these omissions do not effect veracity of evidence of Amna Bi. Substance of the evidence that Amna Bi was standing in front of her house in the morning and the accused was quarrelling with his wife and accused took his wife inside the house, thereafter he set her on fire by pouring kerosene	

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मामला क्रमांक Cr. A. No. 2569/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - १ -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	is already there in the police diary statement, therefore merely the fact that in police diary statement this witness has not stated that the accused/appellant threatened the deceased to set her on fire and thereafter he took her inside the house, does not affect the veracity of the evidence of this witness. She is an independent witness, her house was in front of the house of the accused/appellant. At the time of 6.30 in the morning, presence of a person is natural at her house therefore the trial Court has rightly believed the evidence of P.W.-3 Amna Bi. 10. From perusal of the evidence of prosecution witness as mentioned above it is established that when Rekha sustained burn injuries the accused/appellant was very much present in the house when Rekha sustained 100% burn injuries the accused/appellant took her to her parents house in rickshaw and that has been established by evidence of P.W.-1 Chanda Bai, mother of the deceased and the accused/appellant has nowhere explained in his statement under Section 313 of the Cr.P.C. as to how Rekha sustained burn injuries. Moreover all the witnesses have stated that the accused was standing in his house and he was not speaking anything. Had Rekha sustained accidental burn injuries, it was but natural he ought to have disclosed the thing to the neighbourers or his mother-in-law where he left Rekha. In this regard, Section 106 of the Evidence Act is relevant. Section 106 of the Evidence Act envisages that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the present case as per prosecution evidence the accused/appellant was very much present in the house and it was within his special knowledge that how Rekha sustained burn injuries but instead of explaining that how Rekha sustained burn	

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मामला क्रमांक ... Cr.A... Cr.B: 2569/98 मन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 9 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	injuries his defence is that he has been faisely implicated in the crime. Therefore this circumstance is against the accused/appellant and he has failed to discharge the burden which was on him as per the provisions of Section 106 of the Evidence Act and for this view we are supported by the judgment of the Supreme Court in <u>State of Rajasthan Vs. Kashiram</u> reported in <u>J.T. 2006(10) SC 28</u> and another judgment in <u>Trimukh Maroti Kirkan Vs. State of Maharashtra</u> reported in <u>2006 AIR SCW 5300</u> in which it has been held that non explanation is additional circumstance against the accused/appellant showing his involvement in the crime. 11. So far as offence under Section 498-A is concerned P.W.-3 Amna Bi has stated that accused/appellant and the deceased were residing in her neighbourhood since last one year and accused used to beat Rekha after consuming liquor, she had seen accused/appellant beating the deceased. 12. For the foregoing reasons we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court. The accused/appellant has been rightly convicted under Sections 302 and 498-A of the IPC. There is no merit in this appeal. The same is liable to be dismissed and it is accordingly dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

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12/3/97